

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEMETRIUS HARGROVE,

Defendant.

CRIMINAL ACTION

No. 03-20192-CM

ORDER

Pending before the court is Demetrius Hargrove's Motion to Dismiss Counts One and Two of [the] Superseding Indictment for Lack of Jurisdiction Due to Failure to Charge Predicate Drug Trafficking Offense (Doc. 373). In his motion, defendant claims that in order to bring a viable 18 U.S.C. § 924(j) charge, the government also needed to charge defendant with the predicate drug offense and violation of § 924(c). In other words, because a § 924(j) is a derivative charge, the government must also charge defendant separately with the predicate offenses. Defendant has attached several other indictments to his motion which were framed in the manner in which he claims the indictment in this case should have been framed. Defendant cites no law, however, in support of his position.

Nothing in the statutory scheme requires the government to bring companion charges to a § 924(j) charge. And the fact that the government has chosen to do so in other cases does not obligate the government to do so in all cases. The court views this case as similar to a case involving a § 924(c) conviction without a conviction for the underlying drug transaction. Section 924(c) requires proof of the

predicate offense, but not an actual separate conviction for the predicate offense. *See United States v. Graves*, 106 F.3d 342, 344 (10th Cir. 1997) (citing *United States v. Hill*, 971 F.2d 1461, 1467 (10th Cir. 1992)). Likewise, here, the court concludes that while the jury was required to find proof of the underlying drug trafficking and gun offenses, the jury was not actually required to *convict* of those offenses. *See United States v. Best*, 235 F. Supp. 2d 923, 924 n.3 (N.D. Ind. 2002) (noting that the government “needlessly” charged the defendant with violation of § 924(c) because the indictment also charged the defendant with violation of § 924(j) (citing *United States v. Anderson*, 59 F.3d 1323, 1336 (D.C. Cir. 1995))).

IT IS THEREFORE ORDERED that Demetrius Hargrove’s Motion to Dismiss Counts One and Two of [the] Superseding Indictment for Lack of Jurisdiction Due to Failure to Charge Predicate Drug Trafficking Offense (Doc. 373) is denied.

Dated this 24th day of April 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge